

<p style="text-align: right;">110</p> <p>1 A. He was eligible for FMLA, and his time -- 2 I don't know what his time was coded at without 3 looking at it. Yes, he was eligible for FMLA. 4 Q. So once he had retroactive family medical 5 leave, was he still AWOL? 6 A. He was AWOL for the dates he didn't notify 7 me about. Under FMLA, you're still required to 8 notify your employer of your whereabouts. FMLA 9 doesn't relieve you of that obligation. 10 Q. So your -- it's your contention that 11 family medical leave requires there must always be 12 notification prior to taking FMLA? 13 A. You're required to notify us if you're 14 going to be out at least three business days in 15 advance for prescheduled appointments, treatments, 16 and therapies. And then if you're invoking FMLA for 17 the day or the week, whatever -- because remember, 18 you're on intermittent FMLA. It's not a continuous 19 period of time. You're required to notify your 20 employer of your whereabouts. 21 Q. When somebody's hospitalized, where are 22 they required to notify you? 23 MS. ACKERMANN: Objection. Form. 24 Go ahead and answer. 25 A. Employees are required to notify you at</p>	<p style="text-align: right;">112</p> <p>1 Q. Okay. So does that give you notice that 2 Mr. Rodriguez-Ortega was hospitalized from 3 February 20th to February 23rd? 4 A. Yeah, looks like it. 5 Q. And yet he would still be marked AWOL for 6 that period of time? 7 A. I can't tell you if he was coded -- what 8 days he was coded AWOL without looking, and again, 9 you still have to notify your employer if you're 10 going to be out, whether you're under FMLA or not. 11 You're required, as an employee, to keep your 12 employer notified as to your whereabouts if you're 13 not working. FMLA does not relieve you of the 14 obligation to notify your employer. 15 And again, I don't know what days he was 16 AWOL without looking, so I can't tell you if he was 17 coded AWOL for these dates he was in the hospital or 18 not. 19 Q. Okay. So looking at Exhibit 1, where you 20 refer to three incidents of AWOL in February, late 21 February, you're contending these three incidents of 22 AWOL in late February were not the late February 23 hospitalization dates? 24 A. I can't tell you, because he was out 25 multiple days.</p>
<p style="text-align: right;">111</p> <p>1 least 30 -- I think it's 30 minutes before your 2 shift starts or your schedule starts. 3 Q. Is that family medical leave or Department 4 of Health policy? 5 A. That's a Department of Health policy. 6 Q. So somebody is AWOL even when they have 7 intermittent FMLA if they don't notify you 30 8 minutes before their shift? 9 A. Correct. If they don't work in a facility 10 or do shift work, correct. 11 Q. So once you found out that 12 Mr. Rodriguez-Ortega was hospitalized -- 13 A. I don't know that he was hospitalized. I 14 know that he wasn't at work. 15 Q. Okay. So let's look at Exhibit 5. 16 A. Exhibit 5. Okay. 17 Q. On page five, does it say, "Last admin, 18 February 20th through 23rd, 2020"? 19 A. Page five of 11, under medical facts? 20 Q. Yes. "Was the patient admitted for an 21 overnight stay in a hospital, hospice, or 22 residential medical care facility?" What's the 23 answer? 24 A. "Last admin, February 20th through 25 February 23rd," it looks like.</p>	<p style="text-align: right;">113</p> <p>1 Q. And so you go on to say, "The opportunity, 2 rather than face discipline, was to look into 3 medical retirement, et cetera." What is et cetera? 4 A. Where are you looking at now? 5 Q. About a third of the way down in that 6 third paragraph on page one of Exhibit 1. 7 A. Okay. Let me go back to Exhibit 1, 8 because you had me looking at Exhibit 5, which was 9 his FMLA. 10 MS. ACKERMANN: Which paragraph? 11 MS. BURKE: It's the third paragraph of 12 page one. It's one, two, three -- about five 13 sentences in. 14 A. Okay. On Exhibit 1, and you said the 15 third paragraph? 16 Q. That's correct, of page one. 17 A. Okay. 18 Q. And you say, "the opportunity, rather than 19 face discipline, was to look into medical 20 retirement, et cetera, versus facing up to a 21 five-day suspension for your AWOLs." What do you 22 mean by et cetera? 23 A. Okay. Here we go. Et cetera. Well, 24 we've talked about multiple things in that 25 conversation. We talked to him about he's got to</p>

<p style="text-align: right;">114</p> <p>1 go -- going forward, he cannot not notify us where 2 he is, because he didn't notify me. That was when I 3 had to try to figure out what was going on with him, 4 because he wasn't being responsive, so I ended up 5 reaching out to his brother. So we talked to him 6 about making sure that going forward, if he was 7 going to be out, that he notify me, and he was -- 8 apologized for that and told me he wouldn't do it 9 again.</p> <p>10 And then we talked about to him about 11 medical retirement so that he could focus on his 12 medical needs, and we talked to him about making 13 sure that he had current FMLA paperwork in. We 14 talked to him about the possibility of annual leave 15 donations. That's what the et cetera is about.</p> <p>16 Q. That's what the ALD in the next sentence 17 is, annual leave donations, correct?</p> <p>18 A. Annual leave donations, correct.</p> <p>19 Q. And so he was facing a five-day suspension 20 because he didn't notify you he was in the hospital?</p> <p>21 A. He was -- it's not about him being in the 22 hospital. It's about him not notifying us, per 23 policy, and as a professional courtesy, as to his 24 whereabouts. If you don't notify your employer 25 where you are, regardless of the reason, you're</p>	<p style="text-align: right;">116</p> <p>1 policies are. FMLA does not relieve you of the 2 obligation to notify your employer of your 3 whereabouts.</p> <p>4 Q. So to avoid that five-day suspension, he 5 had the option of looking at medical retirement?</p> <p>6 A. No, I did -- the five-day suspension 7 wasn't an option. It wasn't an option or -- it 8 wasn't something I was pursuing, because I was fully 9 aware of his serious medical conditions, and I 10 didn't feel it was appropriate to discipline him at 11 that time because of his medical condition.</p> <p>12 Q. So it says here, "The opportunity, rather 13 than face discipline, was to look into medical 14 retirement, et cetera, versus facing up to a 15 five-day suspension for your AWOLs."</p> <p>16 A. Yeah, he could have --</p> <p>17 MS. ACKERMANN: I'm sorry. Is there a 18 question pending?</p> <p>19 Q. What did you mean by that?</p> <p>20 MS. ACKERMANN: If you could refer us to 21 what paragraph you're --</p> <p>22 MS. BURKE: Exhibit 1, paragraph three, 23 the same sentence we were looking at last time, 24 about five sentences down.</p> <p>25 MS. ACKERMANN: The one that begins "The</p>
<p style="text-align: right;">115</p> <p>1 absent without leave.</p> <p>2 He is an HR person. He's well-aware of 3 our policies. It wasn't because he was in the 4 hospital that he was being punished or coded as 5 AWOL. He was coded as AWOL, and again, I don't know 6 the dates without looking specifically what days he 7 was coded as AWOL.</p> <p>8 Q. Okay. Do you believe that the Department 9 of Health attendance and notice policy supersedes 10 the Family Medical Leave Act?</p> <p>11 MS. ACKERMANN: Objection. Foundation.</p> <p>12 Q. Do you believe that the Department of 13 Health policy requirements came before the 14 requirements of the Family Medical Leave Act?</p> <p>15 A. I'm -- I don't understand your question.</p> <p>16 Q. You said that the Department of Health had 17 a notice policy of 30 minutes before a shift, 18 correct?</p> <p>19 A. Correct. That's -- absence is another 20 leave policy.</p> <p>21 Q. To your knowledge, that policy stays the 22 same even with intermittent Family Medical Leave 23 Act?</p> <p>24 A. The requirement to notify your employer 25 is -- it's dependent on the employer and what their</p>	<p style="text-align: right;">117</p> <p>1 opportunity"?</p> <p>2 MS. BURKE: Exactly.</p> <p>3 A. Okay. So what's the question?</p> <p>4 Q. You say here that his opportunity was 5 rather than to face discipline was to look at 6 medical retirement. If he wasn't facing discipline, 7 why was that his option?</p> <p>8 A. The opportunity was for him to look at a 9 multitude of things, including his conduct at the 10 time, which was not notifying me, as his supervisor, 11 as to his whereabouts and to correct that. So that 12 was one of many opportunities he had, and rather 13 than face discipline, because I wasn't going to 14 discipline him, because I didn't think it was 15 appropriate. And he didn't get disciplined for 16 those periods -- or however many days he was AWOL. 17 Again, I don't know if he was AWOL, and how many -- 18 was it for a full day? Part of a day? Because 19 again, I don't have that information in front of me.</p> <p>20 So Jeremy had an opportunity to correct 21 the behavior and notify me as a supervisor when he 22 was going to be out from work for whatever reason. 23 He also had the opportunity to apply for annual 24 leave donations, which he did, which I talk about in 25 the next sentence, and I approved that.</p>